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required in § 110.25(a) of those rules and regulations.

[54 FR 52930, Dec. 26, 1989. Redesignated at 56 FR 50039, Oct. 3, 1991, as amended by 59 FR 52667, Oct. 19, 1994; 62 FR 36204, July 7, 1997]

Subpart B—Recordkeeping

§ 338.5 Purpose.

The purpose of this subpart B is two-fold. First, this subpart B notifies all insured state nonmember banks of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B of the Board of Governors of the Federal Reserve System (12 CFR part 202) in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691 *et seq.*). Second, this subpart B notifies certain insured state nonmember banks of their duty to maintain, update and report a register of home loan applications in accordance with Regulation C of the Board of Governors of the Federal Reserve System (12 CFR part 203), which implements the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

[62 FR 36204, July 7, 1997]

§ 338.6 Definitions applicable to this subpart B.

For purposes of this subpart B—

(a) *Bank* means an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Controlled entity* means a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.

[62 FR 36204, July 7, 1997]

§ 338.7 Recordkeeping requirements.

All banks that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence where the extension of credit will be secured by the dwelling shall request and retain the monitoring information required by Regulation B

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of the Board of Governors of the Federal Reserve System (12 CFR part 202).

[62 FR 36204, July 7, 1997]

§ 338.8 Compilation of loan data in register format.

Banks and other lenders required to file a Home Mortgage Disclosure Act loan application register (LAR) with the Federal Deposit Insurance Corporation shall maintain, update and report such LAR in accordance with Regulation C of the Board of Governors of the Federal Reserve System (12 CFR part 203).

[62 FR 36204, July 7, 1997]

§ 338.9 Mortgage lending of a controlled entity.

Any bank which refers any applicants to a controlled entity and which purchases any home purchase loans or home improvement loans as defined in Regulation C of the Board of Governors of the Federal Reserve Board (12 CFR part 203) originated by the controlled entity, as a condition to transacting any business with the controlled entity, shall require the controlled entity to enter into a written agreement with the bank. The written agreement shall provide that the entity shall:

(a) Comply with the requirements of §§ 338.3, 338.4 and 338.7, and, if otherwise subject to Regulation C of the Board of Governors of the Federal Reserve System (12 CFR part 203), § 338.8;

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation; and

(c) Comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.

[49 FR 35764, Sept. 12, 1984. Redesignated and amended at 56 FR 50039, Oct. 3, 1991; 62 FR 36204, July 7, 1997]

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

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APPENDIX A TO PART 339—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

AUTHORITY: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

SOURCE: 61 FR 45706, Aug. 29, 1996, unless otherwise noted.

§ 339.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose*. The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope*. This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 339.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Bank* means an insured state nonmember bank and an insured state branch of a foreign bank or any subsidiary of an insured state nonmember bank.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 339.3 Requirement to purchase flood insurance where available.

(a) *In general*. A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property

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securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* A bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

§ 339.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the bank shall also require the escrow of all premiums and fees for any flood insurance required under § 339.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice

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from the Director of FEMA or other provider of flood insurance that premiums are due, the bank, or a servicer acting on behalf of the bank, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 339.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A non-member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

(b) *Retention of form.* A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

[61 FR 45706, Aug. 29, 1996, as amended at 64 FR 71274, Dec. 21, 1999]

§ 339.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and

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fees incurred in purchasing the insurance.

§ 339.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all

cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The bank shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(f) *Use of prescribed form of notice.* A bank will be considered to be in compliance with the requirement for notice

to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 339.10 Notice of servicer's identity.

(a) *Notice requirement.* When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The bank shall notify the Director of FEMA (or the Director of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX A TO PART 339—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance

of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

- At a minimum, flood insurance purchased must cover *the lesser of*:

- (1) the outstanding principal balance of the loan; *or*

- (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.